

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE
CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 04/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

ROBERT J. WEST,)	1 CA-IC 10-0040
)	
Petitioner,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
THE INDUSTRIAL COMMISSION OF)	Rule 28, Arizona Rules of
ARIZONA,)	Civil Appellate Procedure)
)	
Respondent,)	
)	
FERRINS STATE ROOFING,)	
)	
Respondent Employer,)	
)	
ST. PAUL FIRE AND MARINE)	
INSURANCE,)	
)	
Respondent Carrier.)	
_____)	

Special Action - Industrial Commission

ICA Claim No. 94173-546538

Carrier Claim No. 127-CB-V1H2340-J

Administrative Law Judge James B. Long

AFFIRMED

Robert J. West, Petitioner
In Propria Persona

Surprise

Andrew Wade, Chief Counsel
The Industrial Commission of Arizona
Attorney for Respondent

Phoenix

P O R T L E Y, Judge

¶1 Robert J. West ("Claimant") appeals the Industrial Commission's ("Commission") decision denying his petition to reopen his claim for benefits. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Claimant sustained an industrial injury to his back in March 1994 after falling from a ladder while working for Ferrins State Roofing. After treatment and surgery, he was found to have a permanent disability of an unscheduled type, and his workers' compensation claim closed in June 1996. Claimant, who was working for a different employer, petitioned to reopen his claim in August 2009 and requested medical care.¹ St. Paul Fire and Marine Insurance ("St. Paul"), his former employer's insurance carrier, denied his claim. Claimant then requested a hearing.

¶3 St. Paul scheduled a medical evaluation for Claimant on January 12, 2010. Claimant failed to attend the evaluation, and St. Paul moved to dismiss the petition. The Administrative

¹ Claimant's primary complaint was strong pain in his legs.

Law Judge ("ALJ") denied St Paul's motion and held a hearing on January 20, 2010. After Claimant testified, St. Paul scheduled another medical examination for him on February 22, 2010, and again he failed to attend. At the March 8, 2010 hearing, the ALJ heard from Claimant's doctor, Dr. Landsman.

¶4 The ALJ subsequently denied Claimant's petition and found that he was unable to show that his current injury was causally related to his original 1994 industrial injury. Claimant appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(B) (2003), 23-951(A) (1995), and Arizona Rule of Procedure for Special Actions 10.

DISCUSSION

¶5 Claimant's opening brief does not address the merits of the ALJ's denial of his petition to reopen his claim.² He does not cite to authorities, statutes, or relevant portions of the record. We, therefore, decline to consider his argument.

² Claimant lists his points of contention as follows:

(1) In the following case, I am arguing that L4-5 and S1 have all been affected since day one of my surgery dated March 30, 1994.

(2) It will also prove that my injuries have progressed over time which includes degenerative discs as well as lack of mobility.

(3) I am trying to prove that St. Paul Fire and Marine Insurance should be responsible for any and all damages not just from the date of occurrences but going forward.

See State Farm Mut. Auto Ins. Co. v. Novak, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990); see also ARCAP 13(a)(6) (appellants' contentions shall be identified with citations to relevant authority). We will, however, review the record to determine if sufficient evidence exists to support the ALJ's award.

¶16 "We will affirm a Commission decision if it is reasonably supported by the evidence in a light most favorable to sustaining the award." *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). Additionally, we will not overturn the ALJ's decision absent a clear showing of an abuse of discretion. See *Raban v. Indus. Comm'n*, 25 Ariz. App. 159, 162, 541 P.2d 950, 953 (1975).

¶17 Because Claimant is seeking reopen his claim, he must "show[] by a preponderance of the evidence the presence of a new, additional or previously undiscovered temporary or permanent condition and a causal relationship between the new disability and the prior industrial injury." *Sneed v. Indus. Comm'n*, 124 Ariz. 357, 359, 604 P.2d 621, 623 (1979); see A.R.S. § 23-1061(H) (Supp. 2010). Additionally, Claimant must show that the new condition came into existence between the time his claim closed in 1996 and the time he filed his petition to reopen. See *Phx. Cotton Pickery v. Indus. Comm'n*, 120 Ariz.

137, 138, 584 P.2d 601, 602 (App. 1978). Moreover, because it was not readily apparent that Claimant's recent condition was causally related to his original 1994 industrial accident, medical testimony to establish the causal connection is required. *Sun Valley Masonry, Inc., v. Indus. Comm'n*, 216 Ariz. 462, 465, ¶ 11, 167 P.3d 719, 722 (App. 2007).

¶8 At the March 8, 2010 hearing, Dr. Landsman testified that Claimant came to see him in approximately October 2000 after having an L5-S1 discectomy; Claimant complained of increasing extremity pain since August 2009; and that he scheduled an MRI for Claimant in February 2010. The MRI showed an L3-4 central and right paracentral disc bulge that caused lateral recess stenosis on the right at L3-4. Dr. Landsman then compared the 2010 MRI to Claimant's 2007 MRI and determined that the 2010 image showed pronounced changes. Additionally, Dr. Landsman stated that Claimant's medical records prior to October 20, 2009, had been destroyed. Dr. Landsman testified that because he did not have Claimant's prior medical records, he could not objectively determine if Claimant's original industrial accident was the cause of his current condition.

¶9 Based on the medical evidence presented, the ALJ did not err when it found that Claimant failed to meet his burden of proving a new, additional or previously undiscovered condition

existed as a result of his March 1994 industrial injury. See *Lovitch*, 202 Ariz. at 105-06, 41 P.3d at 643-44.

CONCLUSION

¶10 For the foregoing reasons, we affirm the ALJ's findings and award denying the petition to reopen.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICK IRVINE, Judge